
(1991) 11 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.R. No. 136 of 1990

Mast Ram Saini and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-11-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 13 , 14(1) , 15 , 15(1) , 19
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 10(2)
Constitution of India, 1950 — Article 227, 309, 310, 311, 311(2)

Citation : (1992) 2 ShimLC 240

Hon'ble Judges : Devinder Gupta, J;D.P. Sood, J

Bench : Division Bench

Advocate : H.M. Sharma, in C.W.P. No. 298 of 1986, Dharam Chand, in C.W.P. No. 689 of 1990 and Inder Singh, in C.R. Nos. 135 and 136 of 1990, for the Appellant; M.S. Chandel, Assistant A.G. in C.W.P. No. 298 of 1986 and Respondent Nos. 1 and 2 in C.W.P. in C.W.P. No. 689 of 1990, Inder Singh and Rajiv Sharma, in C.W.P. No. 689 of 1990 and M.S. Chandel, Assistant A.G. and Anand Sharma, in C.R. Nos. 135 and 136 of 1990, for the Respondent

Judgement

Devinder Gupta, J.—This judgment will dispose of a common question of law arising for determination as to whether the cases of ad hoc employees of the State Government are governed by Section 15 of the Administrative Tribunals Act, 1985 (Central Act No. 13 of 1985), herein-after called as the Act.

2. Petitioners in Civil Writ Petition No. 298 of 1986 were appointed as Lecturers in different disciplines on ad hoc basis during different spells of time as detailed in the petition ON March 16, 1986, they filed the present writ petition in this Court seeking direction against the Respondents therein to treat the period of their ad hoc appointment as having continued from the very beginning without any break and to allow them to continue to be in service till regular appointments are made and also to pay to them arrears of pay for the period of artificial breaks.

3. On the basis of notification dated December 31, 1985, January 1, 1986 was

notified as the appointed day on which the provisions of the Act, in so far as they relate to Himachal Pradesh State Administrative Tribunal, were made applicable and vide notification dated August 26, 1986, the State Administrative Tribunal (hereinafter called as the Tribunal) was established by the Central Government on and with effect from September 1, 1986. The Tribunal in view of Section 28 of the Act, which provides for the exclusion of jurisdiction of all civil court, except the Supreme Court or any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947, has been exercising jurisdiction, power and authority conferred by Section 15 of the Act within the State on and from September 1, 1986, in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post.

4. On April 19, 1988, this Court made an order prima facie holding that having regard to the nature and conditions of appointment and all other relevant factors, the cases of ad hoc teachers were not covered by Section 15 of the Act and, therefore, the case was not transferred to the Tribunal and the question was left open to be finally decided at the time of final hearing of the case.

5. Civil Writ Petition No. 689 of 1990 was presented in this Court after the establishment of the Tribunal. The Petitioner in this writ petition questioned Annexure P-3, order passed on November 30, 1990, terminating his ad hoc appointment as Motor Mechanic Instructor in the Industrial Training Institute Jubbal under the Director of Technical Education, Vocational and Industrial Training Himachal Pradesh. The present writ petition was also directed to be heard alongwith Civil Writ Petition No. 298 of 1986 by an order passed on March 25, 1991.

6. Petitioner in Civil Revisions No. 135 and 136 of 1990 instituted two different suits, after the establishment of the Tribunal, in the Court of subordinate Judge First Class, Kangra, seeking declaration of their rights that they had been working on ad hoc basis and were entitled for regularisation and by way of consequential relief prayed for prohibitory injunction restraining the State from terminating their services. Separate applications under Order 39, Rules 1 and 2 of the CPC were also filed alongwith the suits. The trial Court granted an ex parte order of injunction, as prayed, but ultimately vide order dated April 6, 1990, vacated the same and dismissed the applications. Appeals preferred by the Petitioners were also dismissed by the learned Additional District Judge (I), Kangra at Dharamsala on June 27, 1990, by a common order. Feeling aggrieved, Petitioners have preferred the aforementioned civil revision before this Court. While issuing notice, this Court on July 2, 1990, granted ad interim order of injunction in favour of the Petitioners not to terminate their services.

7. While admitting the civil revisions for hearing on October 12, 1990, it was noticed that one of the questions arising for determination was whether the cases of ad hoc employees are covered by Section 13 of the Act and since the Division Bench of this Court in Civil Writ Petition No. 298 of 1986 had already

observed that cases of such teachers were not covered by the said provision of the Act and the question had been left open to be decided finally at the stage of final hearing of the writ petition, the revision petitions were directed to be placed before Hon"ble the Chief Justice for orders regarding hearing of the petitions out of turn. On January 10, 1991, both the petitions were listed for disposal before a Division Bench and vide order passed on April 8, 1991, all the aforementioned four cases were directed to be listed together for hearing and that is how the matters have come up before us.

8. Learned Counsel, appearing for the Respondents, argued that the Act excludes the jurisdiction, power and authority of all courts except the Supreme Court, as also Industrial Tribunal, Labour Court and other authorities constituted under the Industrial Disputes Act, 1947 and confers the same on the Tribunal in relation to recruitment and service matters and since the Petitioners had been appointed, though on ad hoc basis against a post under the State and questions arising for determination pertained to their services in connection with the affairs of the State, neither the Civil Writ Petitions are maintainable and triable by this Court, nor the Civil Suits are triable by Civil Court.

9. In order to answer the question posed before us, it would be pertinent to refer to the two decisions rendered by this Court relating to the jurisdiction of the High Court in the matters of certain service conditions of casual employees.

10. In Jagdev Singh v. State of H.P. and Ors ILR 1987 H.P 475, it was held that daily-rated employees in the Irrigation and Public Health Department of the State Government were not the holders of "civil post" under the State, since no civil service or civil post existed in which daily-rated workmen are appointed and there were no specific conditions of service, prescribed by the State Government, governing the daily-waged employees. As such, provisions of Sub-section (1) of Section 15 of the Act, were held as not applicable to them. It was further held that so far as daily-rated workmen are concerned, the adjudication or trial of disputes and complaints with respect to their recruitment as such, termination, remuneration, the benefits to which they are entitled etc., is a matter over which the High Court still retains the jurisdiction to the exclusion of the Tribunal. The ratio of this judgment was followed in Prem Chand and Ors. v. State and Anr. ILR 1987 H.P 167 , where daily-rated workmen of Himachal Pradesh Forest Printing Press, Solan, were also found as not holding appointment to any civil service of the State or to any civil post under the State and as such the bar of jurisdiction was held as not applicable in the way of the Court to adjudicate upon the dispute raised as to the wages payable to them. The view which was taken in the aforementioned two cases as regards status of daily-rated workmen and the nature of their employment was by following the ratio of a decision of the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, , wherein the Court, while deciding a question whether a Mauzadar in the Assam Valley holds a civil post under the State of Assam and whether the protection of Article 311(2) of the Constitution of India was available to him, after taking into

consideration the various kinds of duties and functions performed by him, held him to be a public servant, whose primary duty was found to be of collection of land revenue and other government dues, observed as under:

The question is whether a Mauzadar is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, See Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed "to the post."

(Emphasis supplied)

11. Ad hoc appointment cannot be equated with the casual engagement of daily-rated employees or casual workers. An appointment is said to be made on ad hoc basis, when it is for a specified period, either against a temporary or permanent

post by way of purely a stop-gap arrangement or an appointment made in a leave vacancy or in the vacancy of an ad hoc nature or on deputation or for some other similar reasons. May be till such temporary or permanent post is filled in on regular basis. Not only initial appointment to a post, whether it is temporary or permanent, but some time even promotions are also made on ad hoc basis. Whether ad hoc appointment is to a temporary or permanent post or ad hoc promotion is to a post the ad hoc employee so appointed or promoted has no vested right to hold the post. (See *S.N. Bhatia v. State of H.P.* ILR 1984 HP 31 and *Dr. V.K Bhargava v. State of H.P. and Anr.* ILR. 1985 HP 358.

12. In *O.P. Gupta v. Municipal Corporation, Delhi* 1973 (I) SLR 209, a Division Bench of Delhi High Court held that whatsoever be the nature of appointment, may be permanent, temporary or ad hoc, a person eligible for promotion has a right to be considered and this is no answer to say that because appointments/promotions were made from time to time until the finalisation of rules only on ad hoc basis, the eligible person had no right to be considered for promotion. The word "ad hoc" has been defined in Webster's Third New International Dictionary (1966 Edition) as "for the particular and/or purpose at hand". In the Random House Dictionary its meaning has been given as "for this special purpose with respect to this subject or thing". In Universal Dictionary (Reader's Digest) this term has been assigned the meaning "for a specific purpose, case, or situation". Thus to our mind the term "ad hoc" employee is conveniently used for a wholly temporary employee, who is appointed/promoted for a specific purpose, case or situation. When the administration stands in dire necessity or call it emergency calling for additional hands for performing administrative task resort is made to ad hoc appointments till a given post either lying vacant or created is filled in a regular manner. In the nature of things it is expected to be a one time act to afford to the administration breathing time to select and appoint candidates in strict compliance with the relevant rules or executive instructions.

13. Considering the nature of appointment, all ad hoc appointments/ promotions are made against a post, may be for a specific period or by way of stop-gap arrangement.

14. As observed in *Kanak Chandra Dutt's* case, "a post exists apart from the holder of the post and a post may be created before the appointment or simultaneously with it". In service jurisprudence engagement of a person as a holder of post is understood only in the sense of a person, who "appointed to the post", which exists apart from the holder thereof. While considering the question as to whether the extra-departmental agents connected with the postal department were holder of a civil post under the Union of India and the orders terminating their service in violation of Article 311(2) of the Constitution were invalid, the Supreme Court in *The Superintendent of Post Offices and Others Vs. P.K. Rajamma*, following the ratio of *Kanak Chandra Dutt's* case, reiterated that a post under the state means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions

of service of a person "appointed to the post." The post exists apart from the holder of the post, which may be created before the appointment or simultaneously with it. Considering the rules governing the employment and following the ratio of decision in Kanak Chandra Dutt's case, the extra-departmental agents were held to be holder of a post under the administrative control of the State.

15. Whenever an appointment or promotion on ad hoc basis is made, it means that the person so appointed or promoted will hold the post till the same is filled in on regular basis. There definitely exists a relationship of master and servant. It is a temporary arrangement only and person appointed or promoted temporarily is a person serving or employed under the State. State has got a right to select and appoint and has also a right to control the manner and method of his doing work and the payment of wages with a right to suspend and remove him from service. An ad hoc employee, though, has no right to hold the post permanently but the mere fact of his being appointed on ad hoc basis amounts to his being appointed against a post. The nature of such appointment, as such, is not of a casual nature, just like the engagement of a casual worker on daily wages.

16. The Petitioners, in all the cases, are ad hoc employees seeking their regularisation/absorption in the service of the State. Sub-section (q) of Section 3 of the Act comprehensively defines the service matters" to mean all matters relating to conditions of service, including disciplinary matters. The nature of dispute raised in the proceedings before us, as conceded by the learned Counsel for the Petitioners, is also a service matter. The Act excludes the jurisdiction, power and authority of all Courts, except the Supreme Court, and confers the same on Tribunals in relation to recruitment and matters concerning recruitment.

17. It was contended by the learned Counsel for the Petitioner that when ad hoc appointee has no right to the post and in case there is no right then there is no remedy and thus there is no question of the forum and as such the question of jurisdiction cannot be said to have arisen and the jurisdiction of the civil court or this Court cannot be said to be ousted.

18. Section 15 of the Act deals with the jurisdiction, powers and authority of the State Administrative Tribunals and provides in Sub-section (1) that save as otherwise expressly provided in the Act, the Administrative Tribunal of a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercise able immediately before that day by all Courts (except the Supreme Court) in relation, inter alia, to : (a) recruitment, and matters concerning recruitment, "to any civil service of the State or to any civil post under the State"; (b) all "service matters" concerning a person (not being a person referred to in clause (c) of Sub-section (1) of Section 15 or a member, person or civilian referred to in clause (b) of Sub-section (1) of Section 14) "appointed to any civil service of the State or any civil post under the State" and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State

Government or of any Corporation or society owned or controlled by State Government.

19. The expression "all Courts" in this context includes civil courts and High Courts but not the Supreme Court. The powers of the High Court under Article 226, in so far as they are exerciseable in relation to service matters stands exclusively conferred on the Tribunal established under the Act. The powers of the civil court in relation to service matters to try all suits of civil nature excepting suits of which cognizance either expressly or impliedly barred also stand conferred on the Tribunal.

20. The position becomes more clear when reference is made to Sections 27, 28 and 29 of the Act. Section 27 of the Act makes the orders of the Tribunal as final. Section 23 excludes the jurisdiction of Courts except the Supreme Court or other Industrial Tribunal, Labour Court etc. concerning service matters. Section 29 provides for the automatic transfer of all pending proceedings in the High Court under Article 226/227 to the Tribunal for adjudication and likewise suits and other proceedings pending before a Court or other authority relating to service matters stands transferred to Tribunal for determination. Reading of the aforementioned provisions of the Act, makes it clear that in case of proceedings transferred to the Tribunal from a civil court or from High Court, the Tribunal alone has the Jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ petition could have respectively exercised. When the original proceedings are initiated before the Tribunal u/s 19, the Tribunal exercises all the powers of civil court or the High Court. The Tribunal, as such, can exercise only such powers which the civil court or the High Court could have exercised by way of judicial review. Such powers, as held in *S.P. Sampat Kumar v. Union of India and Ors.* AIR 1957 SC 386, are neither less nor more. The Supreme Court while upholding the constitutional validity of the Act held that the Tribunal was just a substitute to civil court and High Court in all service matters. The arguments of the learned Counsel for the Petitioners, on the point that since in the absence of there being no right in an ad hoc employee to the post there is no remedy available to him and it will not be possible for the Tribunal to exercise such powers which this Court would have, while hearing petition under Article 226 of the Constitution or a civil court while disposing of civil suit, exercised, has no force.

21. In view of the above, we are of the clear view that provisions of Sub-section (1) of Section 15 of the Act are clearly applicable to such of the employees, who are appointed on ad hoc basis. In relation to all service matters concerning such employees, the Tribunal alone has got jurisdiction to try the same. As such, the Civil Writ Petition No. 298 of 1986, which was pending when the Act came into force and the Tribunal was constituted, shall stand transferred to the Himachal Pradesh State Administrative Tribunal. Parties will, in that case, appear before the Tribunal on November 25, 1991.

22. Civil Writ Petition No. 689 of 1990, which was instituted after the

commencement of the Act and the establishment of the Tribunal is not entertainable by this Court and the same is ordered to be returned to the Petitioner for being presented before an appropriate forum.

23. Civil Revisions No. 135 and 136 of 1990, in view of the aforementioned are dismissed Keeping in view the observations that the suit is exclusively triable by the Tribunal and not by civil court, the plaint is liable to be returned to the Plaintiffs for being presented before the appropriate forum. Accordingly, the record of the civil suit be remitted forthwith to the trial Court with a direction to return the plaint to the Plaintiffs, in both the cases, to enable them to present the same before appropriate forum.

24. Since the Plaintiffs in Civil Revisions No. 135 and 136 of 1990 and Petitioner in C.W.P. No. 689 of 1990 have made oral submissions to the Court expressing their desire to present applications before the Tribunal, the parties in these cases are directed to appear before the Tribunal on December 16, 1991. The Petitioners in Civil Revisions No. 135 and 136 of 1990 will appear before the trial Court on November 25, 1991 to enable them to obtain from the Court the original plaint with an endorsement thereupon, as required under Order 7, Rule 10(2) of the CPC to enable them to present appropriate application before the Tribunal before December 16, 1991. The Registry will return the Civil Writ Petition No. 689 of 1990 to the Petitioner on or before November 25, 1991.

25. The interim relief granted to the Petitioners by this Court on July 2, 1991 in Civil Revisions No. 135 and 136 of 1990 and in Civil Writ Petition No. 689 of 1990 on December 7, 1990, shall continue to operate till December 16, 1991.